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HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:11765 of 2004

DATED: 18-10-2006

Between:

1. The Union of India, rep.by Chief Post Master General, A.P.Circle, Hyderabad and another.

..... PETITIONERS

AND

1. Ch.Venkateswar Rao and another

.....RESPONDENTS

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ORDER:(per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal, in O.A.No.475 of 2003 dated 19-12-2003 as confirmed in R.A.No.7 of 2004 dated 26-02-2004, the Union of India and the Assistant Superintendent of Post Offices, Hyderabad, have approached this Court by way of the present writ petition.

The Central Administrative Tribunal disposed of O.A.No.475 of 2003, by its order dated 19-12-2003, directing the petitioners herein to consider the candidature of the respondent-applicant for recruitment to the post of Postal Assistant. The Tribunal held that, in case the respondent-applicant had submitted an application in response to the notification dated 28-07-2003 and if he satisfied the eligibility criteria, his candidature for recruitment to the post of Postal Assistant should be considered and in case he had not applied, in response to the notification dated 28-07-2003, taking into account G.O.Ms.No.112 dated 27-10-2001 issued by the Government of A.P., the case of the respondent-applicant must be considered along with other candidates.

The petitioners herein filed R.A.No.7 of 2004 in O.A.No.475 of 2003 and the said revision application was dismissed by the Tribunal, by its order dated 26-02-2004. The Tribunal held that, since G.O.Ms.No.112 dated 27-10-2001 was in force, the authorities were bound to take into consideration the said G.O. in terms of the directions issued in the OA, there was no error on the face of the record, and there were no grounds to review the order. The revision application filed by the petitioners herein was dismissed.

Sri A.Rajasekhar Reddy, learned Assistant Solicitor General, would submit that recruitment to the post of Postal Assistant is governed by the rules called the “Department of Posts (Postal

Assistants and Sorting Assistants) Recruitment Rules, 2002" which rules were made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India. The qualifications prescribed under the said Rules, for direct recruitment to the post of Postal Assistant, include that the applicant should possess the minimum educational qualification of 10+2 (Senior Secondary) (excluding Vocational Streams). Learned Assistant Solicitor General would submit that, since the respondent-applicant did not possess this minimum educational qualification of 10+2, he was not entitled to be considered for appointment to the post of Postal Assistant. Learned Assistant Solicitor General would submit that G.O.Ms.No.112, dated 27-10-2001, issued by the Government of A.P., wherein diploma holders were treated as equivalent to intermediate, would not apply since the said instructions are applicable only to services under the State Government and has no application to Central Government Services including that of the Department of Posts. Learned Assistant Solicitor General would also submit that, in any event, since G.O.Ms.No.112 dated 27-10-2001 is in the nature of executive instructions, it cannot supersede the rules made under the proviso to Article 309 of the Constitution of India.

We find considerable force in these submissions of the learned Assistant Solicitor General. G.O.Ms.No.112 dated 27-10-2001 issued by the Government of A.P. cannot be made

applicable to recruitment for posts under the Central Government, more so, when these instructions run contrary to the rules made under the proviso to Article 309 of the Constitution of India.

The orders of the Tribunal, in O.A.No.475 of 2003 dated 19-12-2003 and R.A.No.7 of 2004 dated 26-02-2004, are quashed.

The Writ petition is accordingly allowed. However, in the circumstances, without costs.

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B.PRAKASH RAO, J

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RAMESH RANGANATHAN, J

18th October, 2006

SKM